

DECISION



**THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548**

FILE: B-210713

DATE: March 28, 1984

MATTER OF: Charles L. Eppright

DIGEST:

1. Based on an alleged discrepancy between the originally determined net weight and the net weight determined upon reweigh, an employee seeks reconsideration of a Comptroller General decision upholding his liability for excess weight charges for shipment of his household goods from Germany to Michigan in 1974. Since padding and bracing included in original net weight was excluded from net weight determined by reweigh, discrepancy does not provide a basis to set aside either weight certificate and weight of shipment was properly determined on basis of reweigh documentation. Since weight of padding and bracing was not included in that net weight figure, employee is not entitled to reduction in net weight by 15 percent allowance for padding and bracing.

2. An employee's liability for transportation of household goods weighing in excess of the statutory maximum is to be determined on the basis of net weight billed by the carrier, notwithstanding the employee's allegation that six inventoried items were missing from the 1974 shipment of household goods. Although the regulations were subsequently changed, the industry practice prior to 1977 was to charge a shipper freight charges based on the weight certificates without reduction for the portion of household goods lost or destroyed in shipment.

ISSUE

The issue presented is whether Mr. Charles L. Eppright has submitted sufficient evidence to support his challenge to the accuracy of several weight certificates issued

B-210713

incident to his 1974 transfer from Germany to Michigan. For the reasons given below, we find that he has not met the requisite burden of proof.¹

BACKGROUND

Mr. Eppright was transferred by the Department of the Army from Karlsruhe, Germany, to Battle Creek, Michigan, in 1974 and was authorized to ship his household goods at Government expense, not to exceed the then statutory limitation of 11,000 pounds. Mr. Eppright's household goods were transported from Germany in two lots: a 240-pound net weight air freight shipment of personal effects and a surface shipment of 9,660 pounds net weight of household goods. In addition, household goods with a net weight of 4,380 pounds were shipped to Michigan from their place of storage in California. The total net weight of the three shipments, 14,280 pounds, was 3,280 pounds more than the 11,000-pound statutory maximum. Mr. Eppright was billed \$787.15 for transportation charges attributable to this excess weight.

In a prior decision, Matter of Eppright, B-210713, May 17, 1983, we addressed Mr. Eppright's allegation that the 9,660-pound net weight of the larger shipment of household goods from Germany should have been reduced by the 15 percent allowance for bracing and padding material provided for in paragraph C7050-2c of Volume 2 of the Joint Travel Regulations (change 103, May 1, 1974). That regulation provides for a 15 percent reduction in the net weight of the household goods shipped when special containers are used and the known tare weight does not include the weight of interior bracing and padding materials, but only the weight of the container. This provision permits an approximation of a net weight where the actual net weight cannot be determined.

¹This decision results from the request of Charles L. Eppright, for reconsideration of a prior decision in this matter, B-210713, May 17, 1983. That decision sustained a prior disallowance of his claim by our Claims Group, settlement Z-2718973, December 15, 1980.

B-210713

In the prior decision, we found that the weight of bracing and padding materials, although not included in the originally determined tare weight of this shipment, was deducted from the subsequently determined tare weight as shown by separate weight certificates obtained upon reweighing the shipment at Mr. Eppright's new duty station. Thus, we held that since the net weight of the household goods could be accurately determined by subtracting the tare weight determined by the reweigh from the gross weight determined by the reweigh, the regulation authorizing a 15 percent allowance for bracing and packing was not applicable.

The prior decision also addressed Mr. Eppright's contention that the weight recorded for the shipment of household goods taken out of storage in California and shipped to Michigan was not accurate. Noting that the burden of proving that the weight certificate is incorrect lies with the claimant, Mr. Eppright's allegations were considered and it was determined that the record did not support a conclusion that the recorded weight was incorrect.

BASIS FOR RECONSIDERATION

Mr. Eppright continues to argue that the net weight of 9,660 pounds recorded for the shipment of household goods from Germany to Michigan was overstated. He again alleges that the weight of padding and bracing was not included in the originally determined tare weight. He notes that as a result of a reweigh, the carrier reduced the net weight of this shipment by 1,003 pounds, from 10,663 pounds to 9,660 pounds. He believes that the magnitude of this adjustment by the carrier is itself sufficient to cast doubt on the accuracy of either weight certificate.

Regarding the shipment from Germany as well as the shipment from California Mr. Eppright alleges that lax contract administration by the Department of the Army allowed the carrier to misrepresent the weight of the shipments to its benefit. For this reason and because of the discrepancy in the net weights of the shipment from Germany, he believes that the weight certificates must be set aside.

Mr. Eppright's final point, which he brings before this Office for the first time, is that six inventoried items were missing from the California to Michigan shipment. He questions whether he is required to pay overweight charges on a net weight which he alleges includes items that were not delivered.

DISCUSSION

While we have set aside weight certificates in the past, claimants have been required to meet a heavy burden of proof. We have held that the question of whether and to what extent authorized weight limitations have been exceeded in the shipment of household goods is a question of fact, and as such is a matter primarily for administrative determination. Matter of Newman, B-195256, November 15, 1979. Ordinarily, such a determination will not be questioned in the absence of evidence showing it to be clearly in error. Matter of Gilliland, B-198576, June 10, 1981.

In the Gilliland decision, the employee met the required burden by showing that the weight certificate listing the identification numbers and weight of the four van containers making up his shipment of household goods included a van container number that was not part of his shipment. Because doubt was cast on the accuracy of the weight certificate for that particular van container, the certificate was not used to determine the weight of that portion of his household goods. Instead, a constructive weight was computed based on 7 pounds per cubic foot of container space. See paragraphs 2-8.2b(3) and (4), Federal Travel Regulations (FPMR 101-7, GSA Bulletin FPMR A-40, Supp. 1, September 28, 1981) and Joint Travel Regulations, Volume 2, paragraph C8000-2c. Likewise, we sustained an employee's challenge of a weight certificate where the employee documented that the purported gross weight of the shipment materially exceeded the rated capacity of the scales. However, in that case the employee's allowance was computed on the basis of the discredited weight certificate because the constructive weight computed under FTR paragraph 2-8.2b(4) resulted in a weight greater than that stated on the weight certificate and the Government incurred no additional liability as a result of the computation. Matter of Schmidt, 61 Comp. Gen. 341 (B-199780, April 8, 1982).

Thus, the issue presented is whether Mr. Eppright has met the requisite burden of proof to show that the weight certificates were in error. His first contention is that the weight of padding and bracing was not included in the beginning tare weight of the 9,660-pound shipment from Germany to Michigan.

At the outset, it is important to note an apparent misconception on Mr. Eppright's part. Based on the arguments he has presented it appears that he believes there is disagreement on the issue of whether the weight of interior bracing and padding was included in the original tare weight of 4,656 pounds obtained for the shipment from Germany. It is his contention that bracing and padding was not included. We do not necessarily disagree.

The Government bill of lading shows that the shipment was accomplished by "DOOR TO DOOR CONTAINER CODE 4." Code 4 represents international door-to-door container shipments "whereby the carrier provides containerization at origin residence and transportation to destination residence." See para. 2001an(2)(b), Personal Property Traffic Management Regulation, DOD 4500.34R (May 1971). At the time Mr. Eppright's household goods were shipped, the regulation to be applied for the purpose of determining the net weight of containerized shipments was found at Volume 2 of the Joint Travel Regulations at paragraph C7050-2 (now para. C8000-2). Insofar as pertinent to Mr. Eppright's claim, that regulation sets forth rules covering two distinct situations. If the known tare weight does not include the weight of interior bracing and padding materials but only the weight of the container, then the net weight shall be computed by subtracting the tare weight from the gross weight and reducing the resulting figure by 15 percent. If the tare weight includes the weight of interior padding and bracing, no reduction is permitted. Mr. Eppright argues that the first rule should be applied. In previously disallowing his claim we applied the second rule and refused to allow a 15 percent reduction in the net weight of 9,660 pounds determined by the reweigh.

In this case, the original Government bill of lading shows a gross weight of 15,228 pounds and a tare weight of 4,565 pounds. This tare weight figure appears to represent

B-210713

the weight of the containers exclusive of the weight of interior bracing and padding. If these had been the only weights obtained it would have been proper to allow Mr. Eppright a 15 percent reduction in the 10,663-pound net weight of the shipment, determined by subtracting the original tare from the original gross weight.

However, incident to delivery of the household goods, the carrier performed a reweigh. Because the containerized household goods had been loaded onto trucks for delivery, the reweigh was necessarily accomplished using procedures different than those that had been used in obtaining the original gross and tare weights. The gross and tare weights of the trucks were determined on the day the household goods were delivered to Mr. Eppright's residence. On the day following delivery, the truck used to haul trash and excess packing material back to the warehouse was weighed separately. Based on the difference between the recorded gross and tare weights of that truck the net weight of packing materials hauled away from Mr. Eppright's residence was determined to be 830 pounds. That 830-pound figure was added to the tare weights of the other two trucks to establish an aggregate tare weight of 33,840 pounds for the entire shipment. Since the tare weight determined by the reweigh included the weight of all but the household goods and packing materials left at the employee's residence, the record establishes that the weight of padding and bracing was included in the tare weight obtained upon reweigh. As discussed above, a 15 percent reduction is not permitted where the tare weight includes the weight of interior bracing and padding. It is for this reason that the 15 percent reduction was deemed inappropriate in our prior decision. This conclusion is consistent with 49 C.F.R. 1056.7 which provides that freight charges will be based on the reweigh weights. Moreover, because the weight of padding and bracing is included in the originally determined net weight of 10,663 pounds we cannot agree with Mr. Eppright's contention that the difference between that figure and the subsequently determined net weight of 9,660 pounds, a figure that excludes bracing and padding, is so significant as to cast doubt upon the accuracy of either or both net weight figures.

We also believe that Mr. Eppright's statement that the carrier "worked the contract" to its favor, is unsupported

by the record. Such an allegation is tantamount to an allegation of fraud on the carrier's part. In order to prevail, Mr. Eppright must overcome the strong presumption of honesty and fair dealing which accrues to the contractor; mere suspicion or conjecture is not sufficient to prove fraud. See Matter of Williams, B-207393, May 23, 1983. Likewise, a mere discrepancy or inaccuracy, in itself, cannot be equated with an intent to defraud the Government. 61 Comp. Gen. 399 (1982). Since Mr. Eppright's allegations of wrongdoing on the mover's part are supported primarily by his strong personal belief that his household goods weighed less than the amounts indicated by the weight certificates, we find that he has not met the burden of proof necessary to discredit the challenged weight certificates.

Mr. Eppright's second contention concerns the weight of the California to Michigan shipment. He claims that six inventoried items were missing from the shipment and he asks whether he is required to pay freight charges on goods that were not delivered. In support of this contention he has submitted a DD Form 1840, "Notice of Loss or Damage."

The Supreme Court has recognized that a common carrier's liability for the value of cargo lost prior to delivery is distinct from the shipper's liability for freight charges. Alcoa Steamship Co., Inc. v. United States, 338 U.S. 421 (1949). Prior to 1977, and thus at the time Mr. Eppright's household goods were shipped, the policy of some household goods carriers had been to collect full transportation charges on household goods shipments even though part of the shipment was lost or destroyed. See Ex Parte No. MC-19, 126 MCC 250 (1977). Thus, the carrier's entitlement to freight charges constitutes a separate issue from that of the shipper's entitlement to damages for lost or damaged goods. The shipper may seek reimbursement for the loss or damage by submitting a claim to the carrier for the value of the goods lost or destroyed. See, generally, 49 C.F.R. § 1056.12 (1982). The record indicates that Mr. Eppright had submitted forms to begin the process of obtaining reimbursement for the lost goods. Under regulations in effect at the time that the household goods were shipped, the Government's liability for the freight charges is not affected by the fact that certain items may

21826

B-210713

not have been delivered.² The records show that the United States paid freight charges on the basis of the original weight certificates. Therefore, no adjustment may be made crediting Mr. Eppright with any amount that the United States was legally required to pay.

The decision of May 17, 1983, is sustained.

for *Milton J. Arosow*
Comptroller General
of the United States

²The liability of shippers for full freight charges on household goods shipments continued in effect until 1977 when the Interstate Commerce Commission amended its regulation to prohibit carriers from collecting the pro rata share of the freight charges that corresponded to the portion of the shipment which was lost or destroyed. See Fed. Reg. Vol. 42, No. 33, p. 9668, February 17, 1977, and 49 C.F.R. § 1056.15. Since the shipment of Mr. Eppright's household goods was accomplished prior to the effective date of the amendment to the ICC regulations, the amended regulation may not be utilized to provide relief.

LJE